IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3844 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VIJAYBHAI LALJIBHAI PARMAR

Versus

STATE OF GUJARAT

Appearance:

MR CB DASTOOR for the Petitioner.

Mr.A.Y. Kogje, Assistant GOVERNMENT PLEADER, for Respondent Nos. 1-3

RULE SERVED for Respondent No. 1-2

MS PJ DAVAWALA for Respondent No. 4

SERVED BY RPAD - (R) for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 17/06/2004

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu

has challenged his detention order dated 27.2.2004, by which he is detained under the provisions of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980, on the ground that he has tried to indulge in black-marketing activity, as he was dealing in Blue Kerosene, which is an essential article.

Along with the detention order, the petitioner was also served with the grounds of detention, in which the activity of the petitioner is highlighted. The detaining authority, having been satisfied about such activity of the petitioner, ultimately, passed the aforesaid detention order. It is stated in the detention order that the Deputy Mamlatdar of Civil Supplies Department, Khatlal visited the shop of the petitioner, which is styled as "Shraddha Oil Depot", which is situated at Ladhwel Chokdi, Khatlal Town. The Mamlatdar, with Panchas, raided the said shop, on 5.8.2003, and, at that time, it was found that the petitioner was dealing with Kerosene of 1268 litres for free sale, without taking registration from the Competent Authority. The sample was also sent to the FSL and as per the report of the FSL dated 16.10.2003, in the aforesaid free sale kerosene, mixture of blue coloured kerosene was also found, which, according to the Dept., was added by him subsequently. The authority, having been satisfied that the petitioner has illegally dealt with the said commodity and having committed breach of the Gujarat Essential Articles (Licensing, Control and Stock Declaration) Order, 1981, accordingly detained the petitioner under PBM Act and at present he is in preventive detention. The aforesaid detention order is challenged by the petitioner on various grounds.

At the time of hearing of this petition, Mr.Dastoor, learned Advocate for the petitioner, submitted that even though the so-called incident took place on 5.8.2003, yet, the detention order is passed as late as on 27.2.2004. He submitted that there is nothing to show that in between, the petitioner had continued the said activity. He submitted that, by virtue of such long delay between the date of the incident and passing the order, the order of detention is required to be set aside, as the subjective satisfaction is vitiated.

In this connection, Mr.Dastoor has relied upon the decision of the Supreme Court in Pradeep Nilkanth Paturkar v. S. Ramamurthi and others, AIR 1994 SC 656. It has been observed as under by the Honourable Supreme Court in paragraphs 12 and 13 :-

" ... ...

12. Countering the argument of Mr.Gupta, the learned Additional Solicitor General drew our attention to Rajendrakumar Natvarlal Shah v. State of Gujarat, 1988 (supply) 1 SCR 287 : (AIR 1988 SC 1255) in which this Court held that the non-explanation of the delay between 2nd February and 28th May, 1987 could not give rise to legitimate inference that the subject of satisfaction arrived by the District Magistrate was not genuine. In the same decision, the learned Judges have pointed out "it all depends on the nature of the acts relied on, grave and determined or less serious and corrigible, on the length of the gap, short or long, on the reason for the delay in taking preventive action, like information of participation being available only in the course of an investigation". A perusal of the various decisions of this Court on this legal aspect shows that each case is to be decided on the facts and circumstances appearing in that particular case.

13. Coming to the case on hand, the detention order was passed after 5 months and 8 days from the date of the registration of the last case and more than 4 months from submission of the proposal. What disturbs our mind is that the statements from the witnesses A to E were obtained only after the detenu became successful in getting bail in all the prohibition cases registered against him, that too in the later part of March, 1991. These statements are very much referred to in the grounds of detention and relied upon by the detaining authority along with the registration of the cases under the Act.

... ..."

Mr.Kogje, learned AGP, as well as Mrs.Davawala,

learned Advocate appearing for the Union of India, submitted that delay in passing the order of detention, ipso facto, is not fatal to the detention order, for which reference is made to the decision of this Court in Ghanshyam Govindbhai Patel v. District Magistrate, 1988(2) GLH 410.

So far as the incident in question is concerned, the same occurred on 5th August, 2003. In the meanwhile, the sample was sent to the Laboratory for testing. It is, however, required to be noted that even though the FSL report was made available on 16.10.2003, yet, after considerable time, the order of detention is passed. When the petitioner is dealing in such illegal activity of black-marketing of kerosene, it is not possible to know as to why the authority was required to wait for such a long time. Even after the report of the FSL, considerable time is taken for passing the order of detention. In such type of serious cases, immediate action should be taken. Otherwise, the entire object of resorting to preventive detention in a given case may be frustrated and one may continue to indulge in such activity during such period.

Mr.Dastoor has also relied upon the decision of a learned single Judge of this Court delivered in Special Civil Application No.1328 of 2004, on 26.3.2004. It has been observed by this Court in paragraph 6 as under :-

> " ... ...
>
> 6. For the purpose of passing an order of detention, it was not necessary or obligatory on the part of the detaining authority to direct that a complaint be filed u/s.3 read with section 7 of the Essential Commodities Act, 1955 or to direct the suspension of the licence for a period of 90 days. These are the three different actions which may be taken at different levels by different authorities. They could be taken simultaneously also. It was not necessary for the detaining authority to wait till the filing of FIR and till the passing of a suspension order. So, when the filing of the FIR or the suspension of licence was not sine qua non for passing an order of detention, the delay in passing the order of detention cannot be explained on the ground that in

between, FIR was filed and licence was suspended. Therefore, the above two events, filing of the FIR and the suspension of the licence, would not be explanations acceptable to this Court, for passing the order of detention late after a period of nearly four months.

... ..."

In my view, so far as the question of delay in passing the order in question is concernd, it depends upon the facts of each case. If the authority is able to satisfy the delay in passing such order, such delay in a given case may not be fatal so far as the detention order is concerned. But, unfortunately, in the instant case, neither the detaining authority nor the State Government has explained the delay between the alleged incident and the date of passing the order of detention. At least some explanation was required in the affidavit-in-reply in this connection. Ultimately, therefore, it depends upon the facts and circumstances of each case. But, since, in the instant case, no explanation worth the name is given nor is the learned AGP able to substantiae his argument as to what was the reason for passing the order after considerable time, there is no alternative but to set aside the detention order only on the aforesaid ground. It is, however, clarified that this order is passed considering the fact that, in the instant case, the State is not in a position to give any explanation for such delay and, therefore, this judgment may be treated as a judgment applicable to the facts of the present case only.

Mr.Dastoor, for the petitioner-detenu, submitted that he has taken instruction from the detenu as well as from his relative, who is the brother and and on instructions, he is making the statement that so far as "Shraddha Oil Depot" is concerned, the petitioner shall not carry out any activity of selling kerosene without obtaining valid licence in this behalf. He submitted that he is authorised to make such statement since he has received instructions from his client. Under these circumstances, the District Supply Officer, Nadiad is directed to see that the petitioner may not be permitted to carry on the business in the name of "Shraddha Oil Depot", and he may not be permitted to sell kerosene without obtaining the valid licence from the concerned Department. In a given case, it is for the authority to consider whether such person can be given licence or not. However, in order to see that the statement made by the

counsel on behalf of the detenu is complied with by the detenu by not doing the business, it is for the District Magistrate to monitor this aspect by deputing some Officers for regular inspection to see that the petitioner is not carrying on business in the name and style of "Shraddha Oil Depot" so far as dealing with kerosene articles are concerned. This Court has not expressed any opinion whether the authority is required to give such licence to the petitioner as the said question is left to the wisdom of the authority.

This petition is accordingly allowed. The order of detention dated 27.2.2004 is quashed and set aside. It is ordered that the detenu be released forthwith unless he is required in connection with any other case. Rule is made absolute.

17th June, 2004 (P.B. Majmudar, J.)

***

(apj)